

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PAM VANDEURSEN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:08-CV-2416
)	
CAMBRIA ENTERPRISES, INC., a Minnesota)	Judge Darrah
corporation, and CAMBRIA FABSHOP-)	Magistrate Judge Keys
CHICAGO, INC., a Minnesota corporation,)	
)	
Defendants.)	
)	

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendants, Cambria Enterprises, Inc. and Cambria FabShop – Chicago, Inc. (collectively “Cambria”), pursuant to Federal Rules of Civil Procedure 12(b)(3) and (b)(6), move for dismissal of Plaintiff’s Complaint. In support of this Motion, Defendants state the following:

Background

Plaintiff Pam VanDeursen accepted employment with Cambria as a Market Representative on the condition that she enter into a Confidentiality and Noncompete Agreement (“Agreement”). The Agreement, among other things, precludes VanDeursen from being “involved in any activities in direct competition with the business of Employer” during and for two years following her employment with Cambria. Moreover, the Agreement calls for application of Minnesota law and selects a Minnesota district court as the forum for any dispute relating to the Agreement. A copy of the Agreement is attached to this motion.

In violation of the Agreement, VanDeursen recently accepted employment with Surface Solutions, Inc. (“Surface Solutions”), an independent installation company she called on for Cambria while she was a Cambria Market Representative. Cambria recently terminated its at-

will relationship with Surface Solutions due to poor sales performance. Surface Solutions no longer represents Cambria products, but sells other manufacturers' natural quartz surfaces (*e.g.*, bathroom and kitchen countertops) in direct competition with Cambria.

When Cambria confronted VanDeursen and Surface Solutions with her contract violation, Surface Solutions requested an extension of time to respond to Cambria's concerns. Without receiving a response from Surface Solutions, Defendants received a complaint - - filed by VanDeursen - - in Cook County, Illinois Circuit Court for injunctive relief and a declaratory judgment invalidating the Agreement. Based on diversity, Cambria removed that state court action to this Court.

Reasons Why Complaint Should Be Dismissed

Plaintiff's Complaint should be dismissed for two reasons:

One, Plaintiff's complaint should be dismissed based on improper venue under Federal Rule of Civil Procedure 12(b)(3). Because the Agreement explicitly provides for any matters relating to the Agreement to be addressed in a Minnesota district court, venue in this Court is improper.

Two, Plaintiff's complaint seeks an injunction and declaratory relief to compel Cambria to reinstate Surface Solutions as a seller and installer of Cambria products. However, Federal Rule of Civil Procedure 17(a) requires that every action be prosecuted in the name of the real party in interest. VanDeursen is not the real party in interest and lacks standing to enforce the alleged contract rights of Surface Solutions. Therefore, VanDeursen's claims to reinstate the business relationship between Cambria and Surface Solutions should be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

Relief Requested

Defendants request that Plaintiff's complaint be dismissed.

Dated: May 1, 2008

Respectfully submitted,

CAMBRIA ENTERPRISES, INC. and
CAMBRIA CAMBRIA FABSHOP –
CHICAGO, INC.

By: s/Brian S. Roche

One of Their Attorneys

Local Counsel

Thomas J. Piskorski
Brian P. Roche
SEYFARTH SHAW LLP
131 South Dearborn Street, Suite 2400
Chicago, Illinois 60603
(312) 460-5000

Gregory J. Stenmoe
Steven W. Wilson
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402,
(612) 977-8400

CH1 11470555.1

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on May 1, 2008, **Defendants' Motion to Dismiss Plaintiff's Complaint** was electronically filed using the CM/ECF system which will send notification of such filing to all attorneys of record who have registered for e-mail delivery as listed below:

Michael E. Lavelle
Lavelle Law Group, LLC
218 North Jefferson Street, Suite 203
Chicago, IL 60661

s/Brian P. Roche
Brian P. Roche